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2 NOT FOR PUBLICATION

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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA  
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9 Richard Barrett Eiselman, ) No. 09-1801-PHX-GMS

10 Plaintiff, ) **ORDER**

11 vs. )

12 )  
13 GEICO General Insurance Company, a)  
Maryland Corporation, )

14 Defendant. )  
15 )  
16

17 Pending before the Court is Defendant's Motion To Bifurcate Plaintiff's Breach of  
18 Contract Claim From All Remaining Claims (Dkt. # 15). For the reasons briefly set forth  
19 below, the Court denies the motion without prejudice to either party reasserting a request at  
20 the final pretrial conference to bifurcate the trial of these claims.

21 Federal Rules of Civil Procedure 42(b) authorizes the Court, in its discretion, to order  
22 a separate trial on one or more of the Plaintiff's claims if it determines that such separate  
23 trials would be convenient, expeditious, economical or avoid prejudice. Defendant seeks to  
24 use this rule to obtain a stay of discovery on Plaintiff's bad faith claims pending resolution  
25 of Plaintiff's breach of contract claims. Defendant asserts that such a stay is merited because  
26 none of Plaintiff's claims can survive the resolution of his breach of contract claim, and,  
27 further, such an order would avoid any prejudice from allowing Plaintiff access to his claim  
28 file.

The Court declines to stay discovery on any of Plaintiff's claims based on a pre-assessment of whether the Defendant can expeditiously bring a case-dispositive motion for summary judgment on Plaintiff's breach of contract claim. If Defendant can expeditiously bring such a motion it is encouraged to do so. As the Court recalls, at the scheduling conference both parties indicated they could cooperate in prioritizing the discovery that would be necessary to bring and defend against such a motion. The Court will hold the parties to their word in this respect, and will give little shrift to attempts by either party to unnecessarily prolong discovery or unnecessarily delay ruling on such a motion. Any Rule 56(f) affidavit filed by Plaintiff in response to such a motion will set forth with specificity the discovery necessary to respond to such a motion, why such discovery has not been obtained by Plaintiff in the time prior to the necessary response, and the date by which such discovery can be obtained.

In the meantime, however, the Court believes that it would not serve the purposes of the rule to conduct separate discovery tracks and further believes that it can best assess any avoidable prejudice that Defendant wishes to assert in the context of a specific question identifying particular and avoidable problems that might be addressed by the parties, or resolved by a specific ruling of the Court. Therefore,

**IT IS HEREBY ORDERED** denying Defendant's Motion To Bifurcate Plaintiff's Breach of Contract Claim From All Remaining Claims (Dkt. # 15) without prejudice to either party reasserting a request at the final pretrial conference to bifurcate the trial of these claims.

DATED this 24th day of November, 2009.

G. Murray Snow  
G. Murray Snow  
United States District Judge